IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 338 OF 2004
IN
SUMMARY SUIT NO. 308 OF 2004

Ashok R. Karapurkar & Ors. .. Plaintiffs.

v/s.

Doshi Heaters Pvt. Ltd., ..Defendant.

Mr. S. Nagvadaria i/by Mehta & Co. for the Plaintiffs.
None for the Defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 07th June 2005
PC :

1. The plaintiffs have filed this suit as a summary suit under Order XXXVII of the Code of Civil Procedure, praying for a decree in the sum of Rs. 72,109/- being the principal sum and interest thereon at the rate of 24% per annum, as per the written contract evidenced by the invoices, delivery challans as well as -'C' Form. The transaction in question is of supply of goods between January, 2001 to June,2001. Three invoices were raised of Rs. 1,32,103/- and it appears that in so far as the invoices of January and June, 2001 are concerned, some payment has been made. However, the first invoice of January, 2001 remains unpaid.

2. When this suit was instituted and writ of summons was served, the defendant entered appearance through Advocate K.V. Deorukhkar and Ms. Darshana Adhia. There upon, the plaintiffs through their Advocate took out the summons for judgment and the same has been duly served on the Advocates appearing for the defendant. An affidavit proving service has been placed on record.

3. Despite the service of the summons for judgment, which has been taken out as far as back on 27th April, 2004, the defendant has not applied for leave to defend by filing affidavit. In the light of the clear provisions of Order XXXVII of C.P.C., if no application seeking leave to defend is made, the plaintiff is entitled to a judgment forthwith. I am satisfied that the suit as instituted, answers the mandatory requirement stipulated by Order XXXVII of the Code of Civil Procedure. The claim arises out of written contract as evidenced above. The defendant having accepted the goods and paid the amount under last two invoices, have failed to clear the amount under the first invoice. The stipulation with regard to interest is also provided in the invoice itself. It is binding upon the Defendant. In view of this, the plaintiffs are entitled to a judgment in their favour.

4. There shall be a decree as prayed for. The original documents are taken on record and marked ‘X’ for identification. Affidavit, proving service is marked ‘X-1’. Refund of court fee as well as payment of Advocate’s fee as per Rules. Certified copy of the Decree is expedited.

(S.C.DHARMADHIKARI, J.)

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